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09/735,186	12/15/2000	Claude Brown	800132-15	1344

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EXAMINER

GELLNER, JEFFREY L

ART UNIT

PAPER NUMBER

3643

DATE MAILED: 04/05/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/735,186

Applicant(s)

BROWN, CLAUDE

Examiner

Jeffrey L. Gellner

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 27 February 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-46 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 16-18,30,31,33,34,36-38,40 and 41 is/are allowed.
- 6) ☒ Claim(s) 1,9,11-14,19-27,32,35,39,42 and 43 is/are rejected.
- 7) ☒ Claim(s) 2-8, 10, 15, 28, 29,44-46 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

PETER M. POON  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3600

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6) ☒ Other: See Continuation Sheet.

Continuation of Attachment(s) 6). Other: 1. Copy of page of amendement in 08/958073.  
2. Translation in English of IT 1188128.  
3. Dowload from espacenet.com that IT 1188128 was published 30 December 1987.

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**DETAILED ACTION**

This reissue application was filed without the required offer to surrender the original patent or, if the original is lost or inaccessible, an affidavit or declaration to that effect. The original patent, or a statement as to loss or inaccessibility of the original patent, must be received before this reissue application can be allowed. See 37 CFR 1.178.

***Recapture***

Claims 1 and 9 rejected under 35 U.S.C. 251 as being an improper recapture of broadened claimed subject matter surrendered in the application for the patent upon which the present reissue is based. See *Hester Industries, Inc. v. Stein, Inc.*, 142 F.3d 1472, 46 USPQ2d 1641 (Fed. Cir. 1998); *In re Clement*, 131 F.3d 1464, 45 USPQ2d 1161 (Fed. Cir. 1997); *Ball Corp. v. United States*, 729 F.2d 1429, 1436, 221 USPQ 289, 295 (Fed. Cir. 1984). A broadening aspect is present in the reissue which was not present in the application for patent. The record of the application for the patent shows that the broadening aspect (in the reissue) relates to subject matter that applicant previously surrendered during the prosecution of the application. Accordingly, the narrow scope of the claims in the patent was not an error within the meaning of 35 U.S.C. 251, and the broader scope surrendered in the application for the patent cannot be recaptured by the filing of the present reissue application.

Amendment A, of the original application - 08/958073 -, which was entered 13 July 1998 shows both Claims 1 and 9 amended by the addition of "supersaturated steam" in line 5 along with other language. This is an expansion of the scope of the claim because saturated steam

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would contain less water vapor than supersaturated steam. That is, the Examiner considers steam which is supersaturated to be, by definition, also saturated while steam which is saturated is not necessarily supersaturated.

The Examiner has included a photocopy of the page of Amendment A with the amended language.

*Claim Rejections - 35 USC § 112*

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 19, 24, 32, and 39 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. It appears that "cotton" was not disclosed in the original Specification.

Claims 27, 35, and 42 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. It appears that "nut" was not disclosed in the original Specification.

Claim 43 is rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled

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in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. It appears that "mycelia" was not disclosed in the original Specification.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 11-14 are rejected under 35 U.S.C. 102(b) as being anticipated by Ciman (Italy 1188128; **note:** Examiner is using the translation in English of this document which is supplied to Applicant with this action).

As to Claim 11, Ciman discloses a device (figure on page 12 of the translation in English) for generating a flow substantially comprising superheated steam (as water leaves sprinklers of device of Ciman superheated steam is created, see Claim 3 of page 11 of translation in English) and delivering the superheated steam to a plant sufficient to at least partially defoliate the plant (see 1<sup>st</sup> line of Claim 1 page 10 of the translation in English). The device of Ciman inherently performs the method steps recited in Claim 11.

As to Claim 12, Ciman further discloses the superheated steam at a temperature of 250 to 500°F (250°C defined as between 250 and 500°F).

As to Claim 13, Ciman further discloses the superheated steam generated at a temperature of 300 to 800°F and 5 to 60 psi (see Claim 3 of page 11 of translation in English).

As to Claim 14, the steam of Ciman would inherently be free of water droplets.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 19-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ciman (Italy 1188128).

As to Claims 19-21, the limitations of 11 are disclosed as described above. Not is the plant being cotton, a shrub, or a vine with berries. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the method of Ciman by using with cotton, a shrub, or a vine with berries when these plants are weeds so as to keep fields clean of weeds.

Claims 22-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ciman (Italy 1188128) in view of Yashugin (RU 2002400 C1).

As to Claims 22 and 24, Ciman discloses a device (figure on page 12 of the translation in English) for generating a flow substantially comprising superheated steam (as water leaves sprinklers of device of Ciman superheated steam is created, see Claim 3 of page 11 of translation in English) and delivering the superheated steam to a plant sufficient to inhibit growth of suckers or canes (see 1<sup>st</sup> line of Claim 1 page 10 of the translation in English). Not disclosed is delivering the steam to a plant with a graft. Yashugin, however, discloses the application of steam (defined as hot gases - see abstract in English) to cotton (a species defined by Applicant as

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having a graft - see Applicant's Claim 24). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the device of Ciman by using with cotton as disclosed by Yashugin to control cotton when a weed so as to keep a field weed free. The device of Ciman inherently performs the method steps recited in Claim 11.

As to Claim 23 and 25-27, the limitations of Claim 22 are disclosed as described above. Not disclosed is the method applied to fruit or nut trees, a shrub, or a grape. It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the method of Ciman as modified by Yashugin by using with fruit or nut trees (when volunteers), a shrub, or a vine with berries when these plants are weeds so as to keep fields clean of weeds.

#### ***Allowable Subject Matter***

Claims 15, 28, 29, and 44-46 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims to overcome the cited art.

Claims 16-18, 30-43 are allowed over the cited art.

Claims 2-8, and 10 are objected to as being dependent upon a rejected base claim, but would be allowable over the cited art if their independent claims were allowed.

#### ***Response to Arguments***

Applicant's arguments with respect to claims 1-43 have been considered but are moot in view of the new ground(s) of rejection.




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*Conclusion*

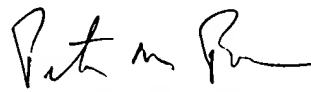
Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Jeffrey L. Gellner whose telephone number is 703.305.0053. The Examiner can normally be reached Monday through Thursday from 8:30 am to 4:00 pm. The Examiner can also be reached on alternate Fridays.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's Supervisor, Peter Poon, can be reached at 703.308.2574. The fax phone numbers for the Technology Center where this application or proceeding is assigned are 703.305.7687, 703.305.3597, and 703.306.4195.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703.308.1113.



Jeffrey L. Gellner



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